

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Implementation of the Non-Accounting
 Safeguards of Sections 271 and 272 of the
 Communications Act of 1934, as amended)

CC Docket No. 96-149

Implementation of the
 Telecommunications Act of 1996:
 Accounting Safeguards Under the
 Telecommunications Act of 1996)

CC Docket No. 96-150

**CONSOLIDATED COMMENTS
 ON THE PETITIONS FOR RECONSIDERATION**

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its *Consolidated Comments on the Petitions for Reconsideration* that were filed on the Commission's *Orders* in the above-captioned proceedings.^{1/} Cox generally supports those Petitions that ask the Commission to maintain sufficient competitive safeguards over Bell Operating Company ("BOC") entry into competitive businesses.^{2/} Cox specifically supports the Petition for

^{1/} Cox has submitted consolidated comments on the *Petitions for Reconsideration* because of the interrelated nature of the competitive safeguards issues involved in the two above-captioned *Orders*. See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489 (released December 24, 1996) ("*Non-Accounting Safeguards Order*"); *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-150, FCC 96-490 (released December 24, 1996) ("*Accounting Safeguards Order*"); (collectively the "*Orders*").

^{2/} See *Petition for Clarification or Partial Reconsideration of the Association for Local Telecommunications Services* (Docket 96-149) (the Commission should codify that BOCs may not provide in-region interLATA information services, except for information services covered by Section 271(g)(4), prior to receiving Section 271 authorization); *Petition for Reconsideration and Clarification of AT&T Corp.* (Docket 96-149) (the Commission should clearly prohibit a

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Reconsideration/Clarification of Time Warner Cable which urges the Commission to clarify that Section 272 applies to BOC provision of video services.^{3/} Cox also urges the Commission to reject the request by SBC Communications, Inc. that the Commission not require an exogenous adjustment when network investment costs are reallocated from regulated to nonregulated.^{4/}

In its petition, Time Warner asks for a clarification that BOCs be permitted to provide video programming only through a separate affiliate. As the *Time Warner Petition* points out, the "incidental interLATA" services exemption in Section 272(a)(2)(B)(i) distinguishes between the telecommunications service transmission underlying a video programming service and the video programming service itself.^{5/} The transmission component is exempt from the Section 272

2/ (...continued)

BOC and a BOC Section 272 affiliate from integrating functions such as marketing, sales, advertising, service design and development, product management, facilities planning and other activities); *Petition for Reconsideration of MCI Telecommunications Corporation* (Docket 96-149) (the Commission should strengthen its separation and nondiscrimination reporting requirements); *Petition for Reconsideration of Teleport Communications Group Inc.* (Docket 96-149) (the Commission should prohibit BOC affiliates from providing both local exchange service and in-region, interLATA service).

3/ *Petition for Reconsideration/Clarification of Time Warner Cable* (Docket 96-149) ("*Time Warner Petition*").

4/ *Petition for Reconsideration of SBC Communications, Inc.* (Docket 96-150) ("*SBC Petition*") at 10-14.

5/ *Time Warner Petition* at 3-4. Section 272(a)(2)(B)(i) exempts "incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g)" from the requirements of Section 272. While Section 271(g)(1)(A) includes "audio programming, video programming, or other programming services" in the definition of incidental interLATA services, Section 271(h) qualifies their "incidental" treatment. Specifically, Section 271(h) states that Section 271(g) is to be "narrowly construed," and limits the application of Section 271(g)(1)(A) to BOC programming services to "those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio and other programming services that the company or its affiliate is engaged in providing to the public."

separate affiliate requirements as an incidental interLATA service, while the video programming service is not. The Commission thus should state explicitly, as the *Time Warner Petition* requests, that a BOC video programming service is to be treated just as any other non-electronic publishing information service under Section 272(a)(2)(C), and therefore is fully subject to the separate affiliate requirements of Section 272.^{6/}

This conclusion is not a matter within the Commission's discretion. The Commission generally has the power under the 1996 Act to make the policy choice to impose structural separation on BOC affiliates engaged in competitive activities.^{7/} In this case, however, there is no policy choice to make. By the words it used in Section 272 and Section 271, Congress mandated that interLATA BOC video programming services be subject to the separate affiliate requirements of Section 272. A BOC therefore may not provide any interLATA video programming services unless it complies with the separate affiliate safeguards of Section 272.

The Commission should also reject SBC's request that the Commission not require an exogenous adjustment when network investment costs are reallocated from regulated to nonregulated accounts.^{8/} Contrary to SBC's argument, it is completely consistent with the intent and principles of price cap regulation that regulated prices should decrease when a BOC enters an unregulated product or service market and network investment previously assigned to

^{6/} *Time Warner Petition* at 4.

^{7/} *See Consolidated Cox Petition* at 3-4.

^{8/} *SBC Petition* at 10-14.

regulated services becomes reclassified as unregulated.^{9/} Ratepayers should never bear the costs of BOC investments that are used for unregulated activities. Absent required exogenous adjustments for BOC reallocations, BOCs will have every incentive to assign network upgrades and other costs to the regulated side of their businesses, even when those costs are in fact made for the primary purpose of BOC entry into competitive businesses. Integrated BOC investments into regulated and nonregulated businesses will become increasingly common as the BOCs continue to use their wireline networks for entry into the long distance, wireless and video markets.^{10/} The Commission already has recognized, correctly, that exogenous adjustments to

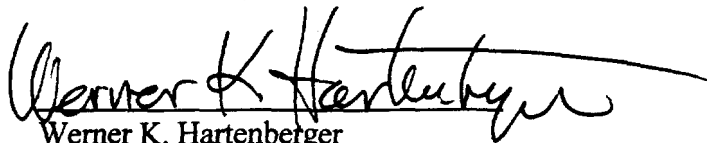
^{9/} *SBC Petition* at 13.

^{10/} *See, e.g., Consolidated Cox Petition* at 3-4.

the price cap indices "will only be eliminated when competition in the local service market eliminates the need for cost allocation rules altogether."^{11/} The Commission should reject SBC's request for a contrary ruling here.

Respectfully submitted,

COX COMMUNICATIONS, INC.

A handwritten signature in dark ink, appearing to read "Werner K. Hartenberger", written over a horizontal line.

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^{11/} *Accounting Safeguards Order* at ¶ 265.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Consolidated Comments on the Petitions for Reconsideration of Cox Communications, Inc." was mailed via U.S. first-class mail, postage prepaid, this 2nd day of April, 1997, to the following:

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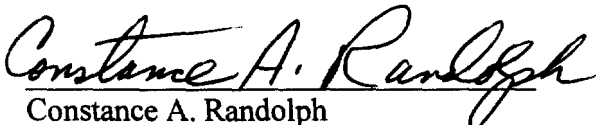
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